

**U.S DEPARTMENT OF ENERGY  
TRANSPORTATION EXTERNAL COORDINATION  
WORKING GROUP MEETING**

**July 24-25, 2007  
Kansas City, Missouri**

**Tribal Topic Group**

The Tribal Topic Group meeting began with a welcome by Mr. Jones (OCRWM/OLM) and proceeded to introductions and an opening prayer offered by Mr. Paytiamo (Pueblo of Acoma).

**Tribal Caucus Summary**

Mr. Arnold (Pahrump Paiute Tribe), Mr. King (Oneida Nation of Wisconsin), and Mr. Preacher (Shoshone-Bannock Tribes), provided a summary of the Tribal Caucus Meeting that was held prior to TEC on Monday July 23, 2007. The focus of the Tribal Caucus was to define the OCRWM program, discuss its scope and who is involved, and evaluate the status of NHPA Section 180(c) funding. The primary issues identified included the time period surrounding the selection of Yucca Mountain transportation routes, which tribes will ultimately be involved, and the funding that will be available based upon current tribal emergency response capabilities. Additionally, participants indicated they would like to have a yearly OCRWM tribal meeting. Tribal members were also encouraged to participate in other TEC Topic Groups.

**Timbisha Shoshone Affected Status**

Ms. Durham (Timbisha Shoshone Tribe) announced that on June 29, 2007, the Timbisha Shoshone Tribe was granted "affected status" by the DOI. A meeting was held between the tribe and DOE representatives, including Director Sproat. During the meeting, participants discussed funding for the tribe, as well as the next steps that the tribe will need to undergo to align it with the "affected counties." Tribal representatives were invited to participate in an Affected Units of Government meeting in Las Vegas the following day.

A short discussion on "affected status" and 180(c) funding followed. Mr. Jones said that tribes with reservations along the Yucca Mountain routes could be eligible for funding under Section 180(c) of the NHPA and that 11 counties have been designated as "affected units of local government." Mr. Lanthrum clarified this issue by stating that the proximity of tribes to Yucca Mountain routes will determine availability and allocation of funding. Congress will determine the level of funds available and states, tribes, and local governments will all have to submit letters to DOE indicating their financial needs related to Yucca Mountain transportation oversight activities.

Another participant added that “affected status” applies to funding for Yucca Mountain oversight and 180(c) funding will apply to transportation to Yucca Mountain. The two are completely independent of one another.

A participant suggested that “affected status” might be a good topic for discussion at the next TEC Tribal Topic Group meeting and that the tribes should work together to understand the issue. Potential panel members for that discussion included DOE staff and Mr. Artman, Assistant Secretary for Indian Affairs at DOI.

Several questions arose pertaining to how the Timbisha Shoshone pursued “affected status.” It was recommended as a topic of discussion for a future Tribal Caucus session.

### **Impact on Oklahoma Tribes**

A participant commented that the tribes are facing many difficulties in the State of Oklahoma due to proposed legislation that removes the Environmental Protection Act rights of the tribes. Additional concern was expressed over transportation issues in Oklahoma. Mr. Lanthrum encouraged tribal members to work with their Congressional Representatives on these issues, because they are outside of the OCRWM program.

Another participant asked if Oklahoma Tribes will be eligible for Section 180(c) funding. Ms. Macaluso responded that the Oklahoma Tribes and their associated land issues are a special situation and that the DOE will work directly with the Oklahoma Tribes on related Section 180(c) funding.

A participant recommended that tribal members take advantage of DOE’s State and Tribal Government Working Group (an EM program). He said several STGWG Tribes have developed good government-to-government working relationships with DOE through the program.

### **Tribal Cultural Presentation**

Mr. Arnold gave a cultural presentation on the tribes involved in the Yucca Mountain Project (YMP) Native American Interaction Program (NAIP). Key aspects of the presentation include:

- In 1985, various studies were performed to identify tribes with cultural and historic ties to the Yucca Mountain area.
- Three ethnic groups were identified through literature reviews and interviews: Western Shoshone, Southern Paiute, Owens Valley Paiute and Shoshone.
- 17 tribes and organizations currently involved in the YMP NAIP.
- Tribal update meetings between the tribes and DOE have been held 1-2 times per year since 1991. Involved tribes have stated on record their opposition to the

proposed repository, yet they also recognize the importance of staying informed and staying current on program status.

- Tribes submit a series of recommendations to the DOE at the conclusion of the meetings.
- Tribes have formed various subcommittees to work on different projects with the DOE.
- The American Indian Writers Subgroup prepared a reference document to be utilized by the writers of the Yucca Mountain EIS to document Native American views and concerns.
- Tribes involved in the preparation of an Ethnobotany Report and American Indian monitors have worked with archaeologists at Yucca Mountain.
- Cultural differences make the work difficult at times. For example, there is no Indian word for radiation. One Indian elder described it as an “angry rock.”
- Important for the tribes to stay involved so the non-Indians do not decide what is important to Indian people

Discussions ensued about future cultural presentations being given on a volunteer basis by alternating tribal groups at TEC meetings. Topic Group members suggested the presentations be given at a plenary session for all TEC attendees.

### **Denver Tribal Workshop**

The spring tribal transportation workshop was held in Denver, Colorado, with a good tribal turnout. Mr. Jones briefly discussed the agenda items, since tribes discussed the workshop in the Caucus the day before. During the workshop, overviews on several DOE programs were presented, including OCRWM, the Office of Congressional and Intergovernmental Affairs (CI) and EM/TEPP. During the workshop, tribes created a list of questions to be answered by DOE. DOE responded in writing and the Q&A list was a topic during the July 23 Tribal Caucus in Kansas City. Group members expressed their opinion that another workshop would be worthwhile. DOE staff present agreed.

A participant suggested that the group take a look at needs assessments and create a lessons learned summary for the next workshop, including sharing experiences with other DOE programs like Naval Reactors and the WIPP program. Mr. Jones suggested collaborating with STGWG might be a possibility. During the workshop, tribal representatives broke out into separate groups to discuss issues related to rail, security, routing and Section 180(c). Each group appointed a lead or “champion” to take the discussions forward among its members. Another participant questioned the need for these four subgroups, based on the availability of TEC Topic Groups, meetings, and conference calls for exchanging thoughts with others on the issues.

## **CI Update – Kristen Ellis**

Ms. Ellis provided a program update, stating that her office reports directly to the Secretary of Energy and represents the entire Department, and not just one or two programs.

The EM *Framework Document* has been signed by several DOE offices and sets down plans for implementing DOE's American Indian Policy. It is under review by the Secretary's Office and will be in effect once it is signed by the 4 signatory offices. OCRWM reviewed the document and will likely modify it to meet OCRWM objectives. Once the document has been finalized, it will be distributed to the TEC Tribal Topic Group for review, with that purpose in mind.

Kristen reported that under the Energy Policy Act, an Office of Indian Energy Policy and Programs will be set up at DOE. A candidate for leading the functions of the office is being considered and DOE upper management would want that program manager to be in touch with the TEC Tribal Topic Group.

## **OCRWM Tribal Involvement Plan**

Ms. Hill (DOE/OCRWM) has a draft Tribal Involvement Plan that will soon be released to the Tribal Topic Group for comment. Mr. Jones commented that the Plan is not a very formal document and would augment the OCRWM *Implementation Framework Document*.

## **National Transportation Plan**

This document was covered in other TEC sessions in Kansas City. OCRWM would appreciate any comments on the document, which should be uploaded to the TEC Website for comment early in September. The Tribal Topic Group will be notified by email.

## **NWPA Section 180(c) Discussion**

Referencing the map of potential Yucca Mountain transportation routes and tribal lands, Ms. Macaluso (OCRWM/OLM) said that if a rail or highway route to Yucca Mountain goes through a reservation, that tribe will be eligible for 180(c) funding and technical assistance. A participant reminded those present that after the routes are selected some of the tribes in the room would not be eligible for funding. Questions were raised on DOE TEPP and the associated Modular Emergency Response Radiological Transportation Training (MERRTT) program (also an EM program). Ms. Macaluso said that tribes are eligible for MERRTT training, as are states and counties. Ms. Marsha Keister (Idaho National Laboratory) offered to provide contact information for those interested in the training.

A participant asked if tribes who are already receiving Hazardous Materials Emergency Preparedness (HMEP) funding would be eligible for Section 180(c) funding. Ms. Macaluso responded that HMEP funding is sponsored by the DOT for all hazardous materials, not just Class 7 Radioactive Waste. She stated if a tribe is eligible for Section 180(c) funding, it will not matter whether or not the tribe also receives HMEP funding. However, the DOE would ask that the tribe consider funding received from other sources as the tribe fills out the application for Section 180(c) funding. DOE will need a clear picture of all related funding received by tribes. Ms. Macaluso indicated that the grant application process will be available on-line, and like other federal grants, will eventually have to be completed on-line.

The discussion then ensued regarding the point that funding amounts available for planning and needs assessment are not to exceed \$200,000 and funding for training is not to exceed \$100,000. Any additional funding will be based on a formula method for states and a needs assessment for the tribes.

A question was raised as to whether 180(c) funding was just for civilian waste. DOE responded that any shipment to the repository under the NWPA will qualify for Section 180(c) funding. EM will handle its own waste shipments. A participant asked how long the funding will last once it is determined a tribe meets the criteria. DOE responded that funding will be available for the life of the program. Another participant suggested that the states need to consider the amount of tribal lands that will be affected by the transportation routes when they are using formulas for potential funding. Otherwise, the tribes could be “short-changed” on funding when doing their needs assessment if their land has been included in the state’s analysis. A participant suggested that there not be a cap on the amount of funding available.

Ms. Macaluso distributed a copy of the “Needs Assessment Approach” for 180(c) funding to the Group. The 180(c) funding and technical assistance *Federal Register Notice* was published earlier in the week and will be emailed to Tribal Topic Group members and other tribal contacts on the OCRWM tribal contact list. If an email address is not available, the Notice will be faxed. Comments are due October 22 (a 90-day comment period). A conference call will be set up to discuss the needs assessment approach. The definition of “eligibility” is outlined on page 40142 of the Notice, and “Allowable Activities” are discussed on the same page.

In response to questions from the floor, Ms. Macaluso offered the following responses:

- In accordance with federal government practice, the Notice applies to Federally Recognized Tribes.
- The only part of the Notice that does not apply to tribes is the section on “Allocation Method.” State allocations will be based on a formula approach and tribal allocations will likely be based on a “needs assessment approach.” A *Federal Register Notice* will eventually be printed to cover the allocation method

for tribes. In that Notice, DOE will address the issue of states claiming miles of highway and railroad tracks located on tribal lands.

Other issues that arose, but for which there was not enough time to thoroughly discuss included:

- How the 180(c) application review committee will be selected (especially the Native American members of the committee). A participant said a regional approach to the committee would be needed to include committee members who know the area under consideration;
- Potential impacts on non-recognized tribes; and
- Consideration of trust lands.

#### **Action Items**

- Contact DOI regarding “affected status”
- Solicit volunteer for cultural presentation at next TEC plenary session
- Once funding becomes available, discuss plans for next tribal transportation workshop
- Make EM *Framework Document* available to Tribal Topic Group
- Distribute Tribal Involvement Plan for comment
- Distribute National Transportation Plan for comment
- Comment on National Transportation Plan
- Distribute 180(c) *Federal Register Notice* by email and/or fax
- Comment on 180(c) *Federal Register Notice*
- Set up a teleconference on the “needs assessment approach”